

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lucinda Richard	Team: Team # 6	CCRB Case #: 200715888	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 10/26/2007 2:40 AM	Location of Incident: the intersection of 71st Avenue and Austin Street	Precinct: 112	18 Mo. SOL 4/26/2009	EO SOL 4/26/2009	
Date/Time CV Reported Wed, 10/31/2007 1:42 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 10/31/2007 1:42 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Raymond Abear	05097	927776	112 PCT
2. POM Frank Jurs	21708	936833	112 PCT
3. SGT Joseph Matzinger	04091	927158	112 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Frank Jurs	Abuse: Officer Frank Jurs stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.SGT Joseph Matzinger	Abuse: Sgt. Joseph Matzinger stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM Raymond Abear	Abuse: Officer Raymond Abear stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.SGT Joseph Matzinger	Force: Sgt. Joseph Matzinger used physical force against § 87(2)(b)	
E.POM Frank Jurs	Abuse: Officer Frank Jurs frisked § 87(2)(b)	
F.POM Frank Jurs	Abuse: Officer Frank Jurs searched § 87(2)(b)	
G.SGT Joseph Matzinger	Abuse: Sgt. Joseph Matzinger frisked § 87(2)(b)	
H.SGT Joseph Matzinger	Abuse: Sgt. Joseph Matzinger searched § 87(2)(b)	
I.POM Raymond Abear	Abuse: Officer Raymond Abear searched § 87(2)(b)	
J.SGT Joseph Matzinger	Abuse: Joseph Matzinger searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
K.POM Raymond Abear	Abuse: Officer Raymond Abear searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Synopsis

On October 26, 2007, at approximately 2:40 a.m., § 87(2)(b) and § 87(2)(b) left a bar located near the intersection of 71st Avenue and Austin Street in Queens. They got into § 87(2)(b)'s car that was parked on the southwest corner of the intersection. Before § 87(2)(b) had turned on the car's ignition, Officer Frank Jurs, Sgt. Joseph Matzinger, and Officer Raymond Abear approached the vehicle and ordered § 87(2)(b) and § 87(2)(b) out of the car (Allegations A, B, and C). § 87(2)(b) did not get out of the car quickly enough, so Sgt. Matzinger allegedly grabbed him by the arm and pulled him out of the car (Allegation D). Then, Officer Jurs frisked and searched § 87(2)(b) (Allegations E and F) while Sgt. Matzinger frisked and searched § 87(2)(b) (Allegations G and H). After Sgt. Matzinger stopped searching § 87(2)(b) Officer Abear allegedly searched him a second time (Allegation I). Then, Sgt. Matzinger and Officer Abear allegedly searched the vehicle in which § 87(2)(b) and § 87(2)(b) had been seated (Allegations J and K). After the officers had completed their search, they left the location without issuing any summonses or affecting any arrests.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b)

On October 31, 2007, § 87(2)(b) filed the following complaint via the agency's on-line website (enc. 6a-f, 7a-c). On November 14, 2007, § 87(2)(b) was interviewed at the CCRB (enc. 8a-d). § 87(2)(b)

§ 87(2)(g)

On October 26, 2007, at approximately 2:40 a.m., § 87(2)(b) and § 87(2)(b) left Bartini's, a lounge and bar located a block south of the intersection of 71st Avenue and Austin Street and walked to § 87(2)(b)'s car that was parked on the southwest corner of that intersection. § 87(2)(b) and § 87(2)(b) had consumed several drinks each, but they were not intoxicated, and their speaking and movement were not impaired. § 87(2)(b) drives a dark blue, four-door Infiniti. § 87(2)(b) sat in the passenger's seat and § 87(2)(b) sat in the driver's seat. Before § 87(2)(b) had a chance to turn the car on, a dark-colored, four-door sedan pulled up next to them and two plainclothes police officers exited the vehicle. PO1 (a white male, 5'10" tall, medium build, dark brown hair, 25-30 years old, and dressed in plainclothes—identified through the investigation as Officer Frank Jurs) approached the driver's side of the car and PO2 (a white male, 6'2" tall, 200 pounds, light brown hair, 25-30 years old, possibly with a goatee, and dressed in plainclothes—identified through the investigation as Sgt. Joseph Matzinger) approached the passenger's side. The windows of § 87(2)(b)'s car were rolled down.

Sgt. Matzinger began yelling at § 87(2)(b) and asking him what his problem was and if he was on "coke." § 87(2)(b) said he was sitting in the car, and denied being on any drugs. At this point, § 87(2)(b) did not know if these men were police officers. He thought they might be trying to rob him and § 87(2)(b). Sgt. Matzinger opened the car door, placed his hand on § 87(2)(b)'s right arm, and told him to get out of the car. § 87(2)(b) exited the car (he was not pulled out of the car, but he did not see if Officer Jurs pulled § 87(2)(b) out of the car) and then walked to the back of the vehicle with Sgt. Matzinger. There, Sgt. Matzinger told him to put his arms on the trunk of the car and lean forward. § 87(2)(b) was compliant and did not ask Matzinger any questions. Sgt. Matzinger frisked § 87(2)(b)'s legs, torso, waist, and underarms. Then, he removed everything from § 87(2)(b)'s pants and jacket pockets. He placed § 87(2)(b)'s wallet, iPod, and cell phone on the trunk of the car. He opened § 87(2)(b)'s wallet and looked through all of his credit cards. Then, Sgt. Matzinger told § 87(2)(b) to stand on the driver's side of the car between § 87(2)(b)'s car and the officers' car, and § 87(2)(b) complied.

During all of this, § 87(2)(b) was standing in front of the hood of his car and he was speaking to Officer Jurs, though § 87(2)(b) could not hear what they were saying. § 87(2)(b) never saw § 87(2)(b) searched or frisked, but he was not paying attention to what was going on with him while Sgt. Matzinger was searching him. Sgt. Matzinger began searching § 87(2)(b)'s vehicle. He looked in the

front and back seat areas, as well as under the seats, and inside § 87(2)(b)'s child's car seat. § 87(2)(b) did not see Sgt. Matzinger open the glove compartment or center console area.

Then, PO3 (a white or Hispanic male, 5'7" tall, heavysset, perhaps with dark brown hair, and dressed in plainclothes—identified through the investigation as Officer Raymond Abear) whom § 87(2)(b) had not noticed before this point, approached § 87(2)(b) and started searching him. § 87(2)(b)'s possessions were still on the trunk of the car and he did not understand why he was being searched for a second time. However, he did not say anything to Officer Abear or anyone else. After he had searched § 87(2)(b) Officer Abear joined Sgt. Matzinger in searching § 87(2)(b)'s car. § 87(2)(b) could hear at this point that Officer Jurs was asking § 87(2)(b) for his license and vehicle registration and explaining to him that there were lots of stolen Infinities in that area. § 87(2)(b) provided that documentation, but the officers kept searching the car even though § 87(2)(b)'s paperwork proved his car was not stolen. After about fifteen or twenty minutes, the officers left the location without explaining why they had stopped the two men. § 87(2)(b) went to the back of the car and collected his belongings from on top of the trunk of the car. He got back in the car and § 87(2)(b) drove him home.

§ 87(2)(b)

On November 14, 2007, § 87(2)(b) was interviewed at the CCRB (enc. 9a-d). § 87(2)(b)

On October 26, 2007, at approximately 2:40 a.m., § 87(2)(b) and § 87(2)(b) left Bartini's, a bar located near the intersection of 71st Avenue and Austin Street in Queens. § 87(2)(b) had only consumed one beer and was not drunk, but § 87(2)(b) was "a little drunk" because he had consumed more drinks at the birthday party they had been attending. When they reached § 87(2)(b)'s dark blue § 87(2)(b) that was parked on the southwest corner of the intersection, they sat down inside the car—§ 87(2)(b) sat in the passenger's seat and § 87(2)(b) sat in the driver's seat. Before they had a chance to turn on the car, an unmarked dark, four-door car pulled up next to their car and three plainclothes officers exited the vehicle. PO1 (a white male, 5'9" or 5'10" tall, weighing 170-180 pounds, with dark hair that was slicked back, and hazel eyes, and dressed in plainclothes—identified through the investigation as Officer Frank Jurs) approached the driver's side of the car and told § 87(2)(b) to get out of the car, which he did without protesting. § 87(2)(b) immediately knew the three men were police officers even though they did not identify themselves as such. Officer Jurs and § 87(2)(b) went to the front of the car, § 87(2)(b) placed his hands on the hood of the car, and Officer Jurs frisked all of his pockets, both pants legs, ankles, and torso area. § 87(2)(b) said, "Hey, what's going on, man?" Officer Jurs replied, "Don't call me 'man.' I'm not 'man.'" He pulled a silver badge on a chain out from under his sweatshirt to show that he was a police officer, but § 87(2)(b) did not take note of his name or shield number.

While frisking § 87(2)(b) Officer Jurs felt a lighter in his left pants pocket and asked what it was, to which § 87(2)(b) said it was a lighter. Officer Jurs reached inside § 87(2)(b)'s pocket, felt that the object was a lighter, and went on frisking him. Officer Jurs explained that he was searching § 87(2)(b) because he "feared for his safety." Meanwhile, PO2 (a white male, 6'2" tall, weighing 230 pounds, with lighter brown hair, and dressed in plainclothes—identified through the investigation as Sgt. Joseph Matzinger) told § 87(2)(b) to get out of the car, but § 87(2)(b) did not do so very quickly, so Sgt. Matzinger opened the passenger's side door, grabbed hold of the sleeve of § 87(2)(b)'s jacket, and pulled him out of the car. § 87(2)(b) did not resist being taken out of the car. Sgt. Matzinger and § 87(2)(b) walked to the back of the car where the officer had § 87(2)(b) place his hands on the trunk while Sgt. Matzinger searched him. § 87(2)(b) could see this taking place through the rear window because he was facing the car's windshield while PO1 frisked him. § 87(2)(b) could also hear Sgt. Matzinger repeatedly asking § 87(2)(b) "Where's the crack?"

When Sgt. Matzinger had finished searching § 87(2)(b) he entered § 87(2)(b)'s car and starting searching around in the seats, the children's car seats, and the glove compartment. PO3 (a white male, 5'6" tall, husky build, with very short dark hair, and dressed in plainclothes—identified through the investigation as Officer Raymond Abear) searched § 87(2)(b) a second time at the back of the vehicle, and then joined Sgt. Matzinger in searching the car. Then, Sgt. Matzinger told § 87(2)(b) to go to the front of the car near § 87(2)(b) and Officer Jurs.

At that point, Officer Jurs explained that many people were stealing Infinities in the neighborhood for their airbags and that was why the officers had stopped them. § 87(2)(b) insisted the car was his own, to which Officer Jurs responded by asking for his license and registration information. § 87(2)(b)

provided that information and then asked why Sgt. Matzinger and Officer Abear were still searching the car if he had proved it was not stolen. Officer Jurs did not answer him. After a few minutes, Sgt. Matzinger looked at Officer Jurs and shook his head, indicating that there was nothing illegal in the car. Officer Jurs told § 87(2)(b) not to drive home if he was drunk, to which § 87(2)(b) said he had only drank one beer and he was able to drive home. The three officers got back in their car and left. None of the officers wrote anything down during the incident or took § 87(2)(b) or § 87(2)(b)'s IDs back to the car to run their names for warrants.

Results of Investigation

Subject Officer Statement: Sgt. Joseph Matzinger

On March 27, 2008, Sgt. Matzinger was interviewed at the CCRB (enc. 13a-b). Sgt. Matzinger is a § 87(2)(b)-old white male, 6'2" tall, weighing 220 pounds, with brown hair and green eyes. On October 26, 2007, Sgt. Matzinger worked from 10:00 p.m. the day before until 7:57 a.m. He was the Anti-Crime sergeant, working with Officer Abear, and assigned to unmarked vehicle number § 87(2)(b). They were dressed in plainclothes.

Sgt. Matzinger did not have any memo book entries regarding this incident (enc. 12a-c). He had no recollection of the incident in question. When shown § 87(2)(b) and § 87(2)(b)'s photographs, Sgt. Matzinger stated that he did not recognize them. He did not have any specific recollections of what he did during his tour, or if he conducted any car stops.

Subject Officer Statement: Officer Frank Jurs

On March 20, 2008, Officer Jurs was interviewed at the CCRB (enc. 11a-b). Officer Jurs is a § 87(2)(b)-year-old white male, 5'9" tall, weighing 190 pounds, with brown hair and brown eyes. On October 26, 2007, Officer Jurs worked a tour that began at 10:00 p.m. the night beforehand and ended at 6:35 a.m. He began his tour in an unmarked black van (vehicle number § 87(2)(b)). He was working with his partner, Officer Petzolt, and they were both dressed in plainclothes. However, at some point after 2:00 a.m., Officer Jurs switched to RMP number § 87(2)(b) which is an unmarked black Impala, and he was Sgt. Matzinger's operator from that point until the end of his tour. Officer Jurs switched vehicles when his partner, Officer Petzolt, returned to the 112th Precinct station house for arrest processing. Officer Jurs did not recall another officer working with him and Sgt. Matzinger for the second half of his tour. Sgt. Matzinger had been on patrol in vehicle 1077 before Officer Jurs joined him as his operator at 4:00 a.m.

Officer Jurs had no recollection of the incident in question. When shown photographs of § 87(2)(b) and § 87(2)(b), Officer Jurs reiterated that he did not recall interacting with them, nor did he recall if he conducted any car stops on the date of incident. Officer Jurs had no relevant memo book entries (enc. 10a-b).

Subject Officer Statement: Officer Raymond Abear

On March 28, 2008, Officer Abear was interviewed at the CCRB (enc. 15a-b). Officer Abear is a § 87(2)(b)-old Asian male, 5'6" tall, weighing 240 pounds, with black hair and brown eyes. On October 26, 2007, Officer Abear was assigned to the 112th Precinct's Anti-Crime team, and he worked a tour that began at 10:00 p.m. the night before and ended at 6:35 a.m. Officer Abear was working with Sgt. Matzinger, dressed in uniform, and assigned to an unmarked black Impala whose vehicle number was § 87(2)(b). Officer Abear did not recall there being another member of the Anti-Crime team in the vehicle with them.

Officer Abear did not have any relevant memo book entries regarding this incident (enc. 14a-c). Officer Abear had no independent recollections of anything he did during his tour on October 26, 2007, and when shown photographs of § 87(2)(b) and § 87(2)(b) he said he did not recognize them or recall stopping them in a black car on any date. Officer Abear did not recall if he and Sgt. Matzinger made any car stops on the date of incident, nor did he recall what they were doing around 2:40 a.m.

Police Department Documents

The 112th Precinct roll call shows that on October 16, 2007, during tour one, Sgt. Matzinger, Officer Jurs, and Officer Petzolt were assigned to vehicle number § 87(2)(b) and they were assigned to the Anti-Crime team. Officer Abear was also assigned to the Anti-Crime team, but he was assigned to vehicle number § 87(2)(b). There are no other officers listed on the roll call that were assigned to vehicle number § 87(2)(b) with Officer Abear (enc. 16a-d). According to the document request receipt from the 112th Precinct, the

only two black or dark blue four-door sedans assigned to that command are vehicle number § 87(2)(b) and vehicle number § 87(2)(b). Both of those vehicles are black Chevy Impalas (enc. 22f). According to the UF 250 log, no officer filed a Stop, Question, and Frisk Report for § 87(2)(b) or § 87(2)(b) on October 26, 2007, in the 112th Precinct (enc. 17a). An MISD check revealed that no officer ran a warrant check for § 87(2)(b) or § 87(2)(b) on October 26, 2007 (enc. 18a-b).

Criminal Conviction Histories

There are no criminal convictions listed for § 87(2)(b) (enc. 19a) or § 87(2)(b) (enc. 20a) in the BADS or OCA databases.

CCRB Complaint Histories

The CCRB has not substantiated any allegations against Sgt. Matzinger during his seven years of service to the NYPD (enc. 1a). The CCRB has not substantiated any allegations against Officer Jurs during his three years of service to the NYPD (enc. 2a). The CCRB has not substantiated any allegations against Officer Abear during his six years of service to the NYPD (enc. 3a). This is the first CCRB complaint in which § 87(2)(b) and § 87(2)(b) have been involved (enc. 4a, 5a).

Conclusions and Recommendations

Officer Identification

Officer Jurs, Sgt. Matzinger, and Officer Abear were identified by the fact that they each matched the physical descriptions of the subject officers provided by both § 87(2)(b) and § 87(2)(b). They were also assigned to the only dark-colored four-door Sedan assigned to the 112th Precinct at the date and time of the incident. Furthermore, the investigation determined that the officers from other commands that were assigned to black or dark blue four-door sedans did not match the physical descriptions provided by § 87(2)(b) and § 87(2)(b).

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

Disputed and Undisputed Facts

Because none of the three officers recalled this incident, and none of them recalled if he conducted any car stops on the date in question, all issues are in dispute.

Assessment of Evidence

§ 87(2)(b) and § 87(2)(b) gave consistent testimony in that they both said that Officer Jurs, Officer Abear, and Sgt. Matzinger stopped them when they were seated in § 87(2)(b)'s car. They also both stated that they were ordered to step out of the car. However, while § 87(2)(b) stated that Sgt. Matzinger grabbed § 87(2)(b) by the arm and pulled him out of the car, § 87(2)(b) denied that Sgt. Matzinger used any force against him. He stated that Sgt. Matzinger placed his hand on § 87(2)(b)'s arm, but that § 87(2)(b) actually exited the car on his own.

§ 87(2)(b) and § 87(2)(b) both stated that Officer Jurs frisked and searched § 87(2)(b) while Sgt. Matzinger frisked and searched § 87(2)(b). They also both stated that after Sgt. Matzinger had finished searching § 87(2)(b) Officer Abear searched him as well. Their statements were also consistent in that they both said that after the officers had searched § 87(2)(b) and § 87(2)(b) Sgt. Matzinger and Officer Abear allegedly searched § 87(2)(b)'s car.

Sgt. Matzinger, Officer Jurs, and Officer Abear did not recall the incident in question. None of them had recollections of any car stops they might have made during their tour. When shown pictures of § 87(2)(b) and § 87(2)(b) none of the officers recognized them. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation A) Abuse of Authority: Officer Frank Jurs stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation B) Abuse of Authority: Sgt. Joseph Matzinger stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation C) Abuse of Authority: Officer Raymond Abear stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation E) Abuse of Authority: Officer Frank Jurs frisked § 87(2)(b)

Allegation F) Abuse of Authority: Officer Frank Jurs searched § 87(2)(b)

Allegation G) Abuse of Authority: Sgt. Joseph Matzinger frisked § 87(2)(b)

Allegation H) Abuse of Authority: Sgt. Joseph Matzinger searched § 87(2)(b)

Allegation I) Abuse of Authority: Officer Raymond Abear searched § 87(2)(b)

Allegation J) Abuse of Authority: Joseph Matzinger searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation K) Abuse of Authority: Officer Raymond Abear searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation D) Force: Sgt. Joseph Matzinger used physical force against § 87(2)(b)

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: